Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	:	
	:	
TELEPHONE COMPANY-CABLE TELEVISION	:	**CC Docket No. 87-266**
Cross-Ownership Rules,	:	
Sections 63.54-63.58	:	
	:	
and	:	
	:	
Amendments to Parts 32, 36, 61, 64, and 69 of the	:	**RM-8221**
Commission's Rules to Establish and Implement	:	
Regulatory Procedures for Video Dialtone Service	:	

REPLY COMMENTS OF USA NETWORKS
WITH RESPECT TO
PREFERENTIAL ACCESS

The proposals under consideration in this proceeding to grant certain categories of programmers "preferential access" to video dialtone platforms are bad public policy and in conflict with First Amendment values. USA Networks, which operates USA Network and the Sci-Fi Channel, submits these reply comments to urge that these proposals be rejected unequivocally and emphatically by the Commission.

There is no real difference between mandatory preferential access and its permissive "will carry" variation. Both proposals contemplate that certain categories of programmers--commercial over-the-air television stations, educational broadcasting stations and PEG programmers--would be accorded access to the video dialtone platform at free or reduced rates. Under mandatory preferential access, the Commission would prescribe the rate or the formula for calculating the rate, if any, that the telephone company would be permitted to charge for inclusion of the preferred programmer on the

platform; under the "will carry" variation, the telephone company would carry the preferred programmers "in the clear" at no charge. See Third Further Notice of Proposed Rulemaking in the Matter of Telephone Company-Cable Television Cross-Ownership Rules at ¶ 245 (released Nov. 7, 1994) ("NPRM"); Comments of Bell Atlantic on Third Further Notice of Proposed Rulemaking at p. 3. The economic consequences of these proposals would be exactly the same: costs incurred by the telephone company from the carriage of "preferred" programmers would be shifted to satellite-delivered services, like ours. In short, we are being asked to subsidize the video dialtone service of "preferred" programmers.

This is irrational. It conflicts with the way in which video dialtone service, as a common carrier function, is intended to operate. The basic premise of video dialtone is that programmers who elect to distribute their services through this vehicle will recover the charge imposed by telephone companies for access to the video platform through the fees paid to programmers by their subscribers. The claim that certain programmers cannot afford the cost of video dialtone distribution and must be relieved of their share of distribution and other costs thus makes no sense, and in application to commercial television stations borders on the ludicrous.

The Commission has recognized that satellite-delivered services, like USA and Sci-Fi, compete--directly and vigorously--with over-the-air television. We compete for audience, for advertising revenues and for programming. Similarly, satellite-delivered services like C-SPAN vie for audiences and programming with public broadcast stations and with PEG programmers. Preferential access plainly would provide preferred programmers with a competitive advantage over their satellite-delivered

counterparts. It would reduce the costs incurred by "preferred" programmers access to the video dialtone platform. Worse yet, it would do this at our expense. We and other satellite-delivered program services would be saddled with costs that we did not cause to be incurred. These distortions of the marketplace cannot be reconciled with the basic purpose of video dialtone service which was designed to increase consumer choice through "non-discriminatory video common carriage." Video Dialtone Order, 7 FCC Rcd. 5781, 5787 (1992). The preferred access arrangements contravene the statutory prohibition of rates which are unduly discriminatory (47 U.S.C. § 202(a)). They are, in any case, bad policy because they simply are unfair.

Preferred access equally offends the purposes underlying the First Amendment. As the NCTA has persuasively shown in its comments, mandatory preferred access raises the same, if not more disturbing, constitutional concerns that led the Supreme Court to require further inquiry into the cable must-carry rules. Comments of the National Cable Television Association at 23-25. Turner Broadcasting System v. FCC, 114 S.Ct. 2445, 2456 (1994). Permissive preferred access is equally at odds with the purposes of the First Amendment. The First Amendment rests on the premise that the "widest possible dissemination of information" is essential to the welfare of the public and can best be achieved by maintaining and protecting a competitive marketplace. Associated Press v. United States, 326 U.S. 1, 20 (1945). Granting preferential access to certain

categories of programmers and requiring their competitors to subsidize their activities simply cannot be reconciled with that goal.

Respectfully submitted,

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